

DOCKETED

FILED

OCT - 8 1976

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF NEW YORK

74 C 1030

MIDWAY MANUFACTURING COMPANY:

Deposition of

vs.

:

Louis Etlinger

THE MAGNAVOX COMPANY

:

SECOND DAY

and

:

74 Civ 1657 CBM

SANDERS ASSOCIATES, INC.

:

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

THE MAGNAVOX COMPANY, et al :

Consolidated Actions

vs.

:

74 C 1030

74 C 2510

BALLY MANUFACTURING

:

75 C 3153

CORPORATION, et al

:

75 C 3933

Continued deposition taken

pursuant to a subpoena and notice at the Sanders Associates, Inc., Headquarters; Spit Brook Road, Nashua, New Hampshire; Wednesday, April 7, 1976; commencing at nine-thirty in the forenoon.

ERNEST W. NOLIN & ASSOCIATES

General Stenographic Reporters

369 ELGIN AVE., MANCHESTER, N. H. 03104

TELEPHONE: 623-6906

ORIGINAL

The only indication PRESENT: what you have already
seen on them is the : For Midway Manufacturing
Company, Bally Manufacturing
and of is, but we are Corporation and Empire:

put it in the chronological Fitch, Even, Tabin & Ludeka,
by Donald L. Welsh, Esq.,
indicate that the letter 135 South LaSalle Street,
Chicago, Illinois.

willing to stipulate that the letter was

For Atari, Inc.:

were mailed to the address about the date

they later.
Flehr, Hohbach, Test, Albritton &
Herbert, by Thomas O. Herbert,
Esq., 160 Sansome Street,
15th Floor, San Francisco,
California.

check of the chronological file also look for any

other letters between For Sanders Associates, Inc.,
and Magnavox Company:

through the file for Theodore W. Anderson, Esq.,
and James T. Williams, Esq.,
77 West Washington Street,
Chicago, Illinois.

request that you do the same for the period of January
Stenotype Reporter :

Ronald J. Hayward
through April or May of 1968.

MR. ANDERSON: "As a threshold
matter, we did find that the chronological file
for 1968 does still exist and it has been checked
and both of the letters you asked about; the letter
of April 9, 1968, Exhibit 22-16; and the letter of
April 12, 1968, Exhibit 22-17, does have copies
of those two letters in the chronological file.

The only indication other than what you have already seen on them is the initial CF, and we don't know who CF is, but we understand that is the person who put it in the chronological file and that does indicate that the letter was mailed and we are willing to stipulate that both of those letters were mailed to the addressees on about the date they bear.

MR. WELSH: Did you in your check of the chronological file also look for any other letters between Sanders and TelePrompter?

MR. ANDERSON: We did not go through the file for that purpose. You did not learn of Mr. Williams' knowledge of that period of January through April or May of 1968.

MR. ANDERSON: From January of '68 to May of '68? MR. WELSH: Yes, from January 1.

MR. ANDERSON: Do you want to know if there are copies of letters that are already here? MR. WELSH: Yes. We would

like to know - have an identification of all letters passing between Sanders and TelePrompter during that time and if there are any which are not a part of Exhibit 22, we would request copies of those?

MR. ANDERSON: All right; we will make that search.

LOUIS ETLINGER

called as a witness, having been previously sworn, was further examined and continued his testimony as follows:

(Interrogatories by Mr. Welsh.)

Q. Mr. Etlinger, is it correct that you did not learn of Mr. Williams' knowledge of a game at Stanford when he was a student until the time of the Russell deposition?

A. That is my recollection and I so stated yesterday.

Q. Did you hear about Mr. Williams' knowledge of that game prior to the Russell deposition?

A. No. As far as I can recall, that is the first instance that I heard about it as I testified.

Q. Do you recall a conversation with either Mr. Williams or Mr. Anderson regarding Mr. Williams having seen

a game, such conversation occurring around May of 1975?

A. No.

Q. Prior to the Russell deposition, were you informed - did you receive any information about Mr. Williams having seen any game as a student? That is, any game played using a cathode ray tube?

A. No, I don't recall any such discussions with him.

Q. Do you recall being informed about that by anyone?

A. No.

Q. Either prior to or during the pendency of the applications for the reissue patents involved in this litigation, did you have any discussions with Mr. Briody regarding the question of whether to bring any prior art to the attention of the Patent Office?

A. I don't recall any conversation with Mr. Briody about the necessity of bringing any prior art to the attention of the Patent Office.

Q. Did you ever discuss with Mr. Briody the question of whether to bring Space War to the attention of the Patent Office?

A. As far as I know, no.

8 Q. Shortly after you read the article on Space War in, "II Cybernetic Frontiers," did you discuss Space War with Mr. Briody?

A. Yes. MR. WELSH: Yes, this is a

9 Q. Did you discuss with Mr. Briody whether to make an investigation to determine more about Space War? the current question and go back and read the

A. I don't think so. I answer. I think it is three

10 Q. What did you discuss with Mr. Briody regarding Space War? answered.

MR. ANDERSON: I object to (whereupon, the requested the question as attorney-client privilege and question and answer were work product and instruct the witness not to answer. read back by the reporter.)

11 Q. Is it your testimony that you did not discuss with Mr. Briody the question of whether to call Space War to the attention of the Patent Office? it is the same question or MR. ANDERSON: I think you have asked him that question and he has answered that question.

2 Q. Is that your testimony? WELSH: I don't believe he instructed you not to MR. ANDERSON: Do you want to have it reread? MR. WELSH: You say answer the question, if you MR. WELSH: The question?

MR. ANDERSON: And the answer.

You asked him that specific question and he answered it.

(Whereupon, the previous

MR. WELSH: Yes, this is a
question was read back

different question.

by the reporter.)

MR. ANDERSON: Well, then,

read the current question and go back and read the

other question and answer. I think it is three

questions back. The next to the last one that he

actually answered. of Space War to any claims

pending in the applications for the reissue

(Whereupon, the requested

patents?

question and answer were

MR. ANDERSON: Well, I object.

read back by the reporter.)

I think this is all in the area of attorney-client

privilege communication. MR. ANDERSON: I object to the

question either on the grounds, then, that it is

the same question or the new question mischaracterizes

the testimony if you say it is a different question.

One of the two. Is it a common interest with respect

to the pending application? MR. WELSH: I don't believe he

instructed you not to answer. Well, I

understand you are not. MR. ANDERSON: You may answer

the question, if you can. you want to so stipulate,

then I guess I would THE WITNESS: Would you read the question, please?

If you are relying on Space War as prior art in (Whereupon, the previous the litigation in which you are taking this question was read back deposition, I believe that communication is with by the reporter.)

respect to that prior art that you are alleging, privilege communications THE WITNESS: Yes.

To the best of my knowledge, yes. Oh you are trying to

13 Q. Did you have any discussion with Mr. Briodyles regarding the relation of Space War to any claims pending in the applications for the reissue patents?

MR. WELSH: These are communications which MR. ANDERSON: Well, I object. I think this is all in the area of attorney-client privilege communications and work product and I should instruct the witness not to answer. Now we are

claiming that as prior MR. WELSH: What is the basis for this claim of attorney-client privilege, which Mr. Anderson? Is it a common interest with respect to the pending applications in the Patent Office?

in the reissue appli MR. ANDERSON: Well, I understand you are relying upon Space War as prior art. If you are not and you want to so stipulate,

then I guess I would have no objection to having this witness perhaps testify about Space War.

If you are relying on Space War as prior art in the litigation in which you are taking this deposition, I believe that communication is with respect to that prior art that you are alleging, these privilege communication, and the relationship with that prior art on which you are trying to rely and the claims and the patents are issues in this lawsuit and clearly communications regarding them are privileged and work product. All, they are the same claims for MR. WELSH: These are the communications which took place during pendency of the applications for reissue in the Patent Office and the question is directed to the claims of those pending applications; and whether or not we are claiming that as prior art in the litigation would seem to have no bearing on the communications which they had with respect to the claims then pending.

Are you claiming that they had a common interest in the reissue applications? In Mr. Brady?

Within a few years. MR. ANDERSON: The claims then pending are the claims in this lawsuit, the very

A. same claims in most cases, and the lawsuit was pending for over a year at the time that the

Q. alleged conference you are asking about occurred and therefore I think it is clearly work product

A. and attorney-client privilege. the patents were

issued, but I do know MR. WELSH: At the time of these or of this discussion which I understand is shortly after Mr. Etlinger read the "II Cybernetic Frontiers" article in July of 1975, the claims of the reissue applications were not then involved in the litigation.

Q. The letter forwarding MR. ANDERSON: Well, they are the same claims for the most part as are in the issued patents. In fact, you haven't fixed the time in which these conversations occurred. It is quite possible that one of the reissues had already been reissued when these conversations occurred,

A. as far as the record shows and I just think it is clearly attorney-client privilege and it is clearly work product. any days to get here. it came very

Q. How soon after you read the "II Cybernetic Frontiers" article did you discuss it with Mr. Briody?

A. Within a few weeks. I believe that I had it for

Q. Was it within a few days? at it,

28 A. I am not sure, it was sometime after we got the
A. article.

16 Q. Was it prior to the reissuance of the first
reissue patent?

A. I don't remember the date that the patents were
issued, but I do know that that book came very
late in that month, June or July, whenever it was,
sent to me. It was either delayed in the mail or
something, but it came very close to the end of
the month. Something like the 24th or the 25th.

17 Q. The letter forwarding that identified as Document 10
in the Magnavox and Sanders responses to Bally
Interrogatory No. 11 was dated July 21, 1975. I
don't believe you have answered the question which
was, Did you have the discussion prior to the date
of reissue of the first patent which was August 5,
1975? I have limited the question now to the

A. I am not sure. I do remember that booklet took
some days, many days to get here. It came very
close to the end of the month. Whether I picked it
up right away or within a week or two, I can't
remember. My recollection is that I had it for
some time before I looked at it.

8 Q. Do you have the notes regarding that conversation?

A. No. answer the question based on my instructions

9 Q. Did you in that conversation with Mr. Briody
discuss Space War and its relation to the claims
of the reissue applications which were not in the
original patents? something commercially with

10 To Jared, did you answer MR. ANDERSON: I object to the
question as an attorney-client communication subject
A. to the attorney-client privilege and work product
and I instruct the witness not to answer. correct

and the lay state MR. WELSH: Mr. Anderson,
those claims at the time of that conversation were
Q. not involved in this litigation and I believe it is
a proper question when limited, at least when

limited to the reissue claims. I believe it is
A. also proper when not limited to the reissue claims,

Q. but we have limited the question now to the

A. reissue claims. correct, we had

discussed it before MR. ANDERSON: Well, we disagree.

Q. Do you refuse to answer, Mr. Etlinger? mentioned

A. Have I been instructed by my attorney not to answer?

Q. Was the use of the MR. ANDERSON: Yes, you have
been. the potential use of the invention which

THE WITNESS: Then I refuse

to answer the question based on my instructions from my attorney.

21 Q. When you and Mr. Baer were considering getting in touch with outside people who might have an interest in doing something commercially with TV games, did you and he have conversation on commercializing the TV game as a training device?

A. Well, I mentioned yesterday we had thought about many things, but we decided that the big market and the big potential was the commercial field as applied to TV sets, monitors and games.

2 Q. Even though you made that decision, did you prior to it give consideration to commercializing the TV game concept as a training device?

A. Not seriously.

1 Q. What consideration did you give to that?

A. Well, to the best of my recollection, we had discussed all the potential uses of the invention and we decided to go after the market I mentioned in my previous answer.

Q. Was the use of the TV game as a training device one of the potential uses of the invention which

you considered? MR. ANDERSON: He has avoided

A. I think I have answered that question twice, he
Mr. Welsh. I can't answer any more on that question.
question. I have already given you an answer
twice yesterday, twice today; and if my attorney
doesn't say it, I feel I am being harassed for
the same thing four times in a row. I can't give
you any other answers, Mr. Welsh. We looked at
it and we decided the market for it and we didn't
do anything about it and that is where it stood.

Q. Did you and/or Mr. Baer discuss the use of the
TV gaming concept as a training device with anybody
else at Sanders? I will permit the witness to

A. I don't believe so.

Q. Was such a use one of the potential uses which you
considered for invention?

MR. ANDERSON: Well, the
(whereupon, the previous
witness answered that question several times
question was read back
yesterday and today and he has so indicated as he
by the reporter.)

just indicated on the record that he thinks he
Q. answered it four times and that may be; but he
certainly has answered the question both yesterday
and today. potential uses of the invention discussed

by you and Mr. Baer? MR. WELSH: He has avoided
A. answering the question. He has stated that he
and Mr. Baer considered many things, they discussed
all of the potential uses and they reached a decision
to go into the commercial field. He has not said
A. whether the use of the game as - or the concept
as a training device was one of the potential uses
he and Mr. Baer considered. THE WITNESS: Could I have the

answer back? MR. ANDERSON: Are you saying
that that was not testified to yesterday?

(Whereupon, the previous
MR. WELSH: I am. answer was read back

MR. ANDERSON: Well, I think
by the reporter.)
you are in error. I will permit the witness to

Q. answer. you and Mr. Baer consider that the TV gaming
concept would be used THE WITNESS: Would you read
the question, please?

MR. ANDERSON: I object, the
(Whereupon, the previous
question is lacking a foundation or it is ambiguous,
question was read back
one of the two.

by the reporter.)

Q. Did you consider that the TV gaming concept was

Q. All right; I will restate the question. Was the

A. use of the TV gaming concept as a training device
one of the potential uses of the invention discussed

by you and Mr. Baer? MR. WELSH: Read the answer,

A. In a general way, yes.

Q. In what general way did you and Mr. Baer discuss
(Whereupon, the previous
the use of the TV gaming concept as a training
answer was read back
device?

A. When we considered what were the potential
(by the reporter.)

possibilities of the invention could be made useful

in training apparatus MR. HERBERT: Could I have the

A. answer back? patents that are ancillary to these

that are not in this suit which involve selections
(Whereupon, the previous
of answers put up on a board, on a TV screen, which
answer was read back
you can receive an indication if you get a correct
by the reporter.)
answer.

Q. How did you and Mr. Baer consider that the TV gaming
concept would be used as a training device or status?

A. in a training device? these concepts worked out,

Mr. Welch.

MR. ANDERSON: I object, the

Q. question is lacking a foundation or it is ambiguous,
one of the two. Is device?

Q. Did you consider that the TV gaming concept was the
useful in training apparatus? I think the

A. Well, we thought that we could in some way make it
useful for training apparatus.

MR. WELSH: Read the answer, please. Time when Mr. Baer and Mr. Etlinger were discussing ways to commercialize the TV game concept, (Whereupon, the previous which I understand to be around early 1968 when they answer was read back were contacting outside people such as Tele-Prompter, by the reporter.)

MR. ANDERSON: I think that is

31 Q. In what way did you think it could be made useful in training apparatus? In the context of prior to

A. We have some patents that are ancillary to these that are not in this suit which involve selections of answers put up on a board, on a TV screen, which you can receive an indication if you get a correct answer. tion, please?

2 Q. Was there any other way which you thought the TV gaming concept might be used in training apparatus?

A. I don't think we had these concepts worked out, Mr. Welsh.

3 Q. Did you consider the possibility of flight or military training devices?

never did any design MR. ANDERSON: I object to the question as not fixed in time. I think the record is becoming ambiguous as to what time you are referring to. the invention.

Is it your answer to MR. WELSH: I am still referring to the time when Mr. Baer and Mr. Etlinger were discussing ways to commercialize the TV game concept, which I understand to be around early 1968 when they were contacting outside people such as TelePrompter.

In response to the Q MR. ANDERSON: I think that is a shift in the time frame from your first time frame which was, I think, set in the context of prior to talking to anybody. Another question and not tell him what his answer was, MR. WELSH: Well, I am now setting it as around that time for the use of the TV gaming concept as THE WITNESS: Would you read the question, please?

MR. ANDERSON: That is a (Whereupon, the previous flight or military in contrast to training device question was read back generally, which has been asked many times and by the reporter.) answered several times?

THE WITNESS: In just a general way, we never worked out any apparatus, never did any design work or any other work or made any proposal to anyone for doing so. It was just a passing discussion on the general potentialities and possibilities of the invention. In a general way,

Q. Is it your answer that in a general way you did also consider the use of the TV gaming concept in a flight or military training device? I object, the record will show if MR. ANDERSON: I object, let his answer is what the court reporter took down it. in response to the question. And if you want to propose your own answer that is up to you, but I think if you want to ask the witness another question, ask him another question and not tell him what his answer was, which is of record. (Whereupon, the requested answer was read back)

Q. Did you in a general way consider the use of the TV gaming concept as a flight or military training device? and Mr. Baer consider the use of the

TV gaming concept as MR. ANDERSON: That is a training flight or military in contrast to training device generally, which has been asked many times and answered several times? ion that has just been asked and answered. THE WITNESS: I have a problem

in your question, I don't know what you mean by "in a general way," Mr. Walsh.

Q. You answered the previous question, "in a general way," and it wasn't clear whether there was to be a period after that or whether in a general way was,

you went on and did not make any specific proposals to anyone.

MR. ANDERSON: I object, the record will show if there is a period after what he said and if the record is wrong, we can correct it.

MR. WELSH: Would you read that answer, then, and tell me whether you put a period after it? State whether they considered the possibility.

(Whereupon, the requested
answer was read back
by the reporter.)

Q. Did you and Mr. Baer consider the use of the TV gaming concept as a flight or military training device?

MR. ANDERSON: I object, I think that is the question that has just been asked and answered.

MR. WELSH: He didn't answer the question.

MR. ANDERSON: You asked it and he gave an answer.

MR. WELSH: He gave an answer,

but he didn't answer the question. the answers
you think you would MR. ANDERSON: He gave, as I
understand the reporter read it, a specific answer.
I instruct the witness not to answer the question,
if has been asked and answered. n't do.

MR. WELSH: He merely stated
that they did not design any specific apparatus, ering
he did not state whether they considered the ring
possibility. ons.

MR. ANDERSON: He I think he did.
I heard the reporter read it. do something.

MR. WELSH: If the reporter
had put a period after the phrase, "in a general
way," then I agree that he would have answered the
question; but, as he answered, his answer was not
responsive to the question. od, and then go on.

MR. ANDERSON: This entire line
is irrelevant as far as I can see and we are wasting
a lot of time and you have asked the same questions
over and over again. and. Now, either your grammar

is weak or you have MR. WELSH: Only because I am
not getting answers. is the deviation with

this witness or per MR. ANDERSON: You are getting

answers. Maybe you are not getting the answers you think you would like, but that is immaterial. answered it, the rec MR. WELSH: He can answer the question yes or no and he evaded answering it by referring to something they didn't do.

MR. ANDERSON: I absolutely disagree with that, he has not been evading answering any question. He has been complete in answering those questions. device, how did you contemplate the concept would be MR. WELSH: He answered the

question by saying he did not do something. device, Mr. Welsh. MR. ANDERSON: He said in a

general way. litary training device?

I don't think I used MR. WELSH: He said, "in a general way," we did not do so-and-so. He did not say in a general way, period, and then go on.

MR. ANDERSON: He said in a general way, comma. Now, I don't think there is any difference between in a general way, comma, or in a general way, period. Now, either your grammar is weak or you have something that you are just not going to accomplish in the deposition with this witness or perhaps never, but I see no difference

between in a general way, comma, and in a general way, ^{perd}. You have asked the question and he has answered it, the record speaks for itself.

(Whereupon, a recess was taken.)

Q. When you and Mr. Baer considered the use of the TV gaming concept in a general way as a flight or military training device, how did you contemplate the concept would be so used?

A. I don't think I used the term flight or training device, Mr. Welsh.

Q. Flight or military training device?

A. I don't think I used the term flight or military training device either.

Q. Well, the question that had been asked of you was if you and Mr. Baer considered the use of the TV gaming concept in a flight or military training device and your answer included in it the phrase in a general way.

A. Then I am sorry, let me state that we had in a general way - and if you want to put in a period there, be my guest - considered various applications

7 mo May 13, 1976 7 JH

of the concepts of the inventions involved and in a very light and cursory way went over the things and we decided that we would approach what we considered to be the best potential market and we then went after and sought after licenses.

Q. Referring to Exhibit 22-4B, which was an agreement signed by Mr. Schlafly of TelePrompter, there appears a reference to Sanders television gaming and training apparatus or methods, what was meant by training apparatus or methods there?

MR. ANDERSON: I object to the question as vague and ambiguous and lacking a

foundation, asking for speculation of the witness as to what was meant by a document that you placed before him. Meant to whom?

THE WITNESS: Mr. Welsh, I

don't know if this is either the title or the name as contained in the patents. If they are, then

it was meant to cover whatever are in those patent titles; and, if you would make those available to

me, I might see them. Well, here is Patent No. 3,728,480, the title is Television Gaming and Training Apparatus.

We did have, I think, some method claims in one of

these patents. As far as I can remember, this covers the attempt there was to cover what the patents are and the concepts involved.

Q. Is it your statement that training apparatus used in Exhibit 22-4B means the same thing as it means in Patent No. - the title of Patent No. 3,728,480?

MR. ANDERSON: I object to your question. You are characterizing what you think the witness stated. The record makes a record of what the witness stated in response to the question. If you have another question, ask him a new witness question. Answer that question in that form.

Q. What did you mean by training apparatus in Exhibit 22-4B? Other than those set out in the declarations of the MR. ANDERSON: The witness has

A. already answered that question to the extent that

Q. "training apparatus" is a part of a larger term which you have taken out of context. The term is TV gaming and training apparatus or methods in Exhibit 22-4B.

Q. What examiner were the THE WITNESS: Well, I don't recall what I had in mind on June 18, 1968, r.

Q. Mr. Welsh. It has been a long time ago. Is it that

44 Q. Did you and Mr. Baer ever discuss the possibility of using the TV gaming concept as a flight training device? applications?

A. Yes. MR. ANDERSON: If you recall.

Q. What did you have to do? THE WITNESS: I don't recall,

A. Mr. Welsh, of the department and the attorney

5 Q. What was the purpose of filing the reissue applications? or not the discussion would be held.

A. MR. ANDERSON: I object to the question as speculative, opinion, attorney-client privilege, work product; and I instruct the witness not to answer that question in that form.

Q. Was there any purpose for filing the reissue applications other than those set out in the declarations of the applications?

A. Not that I am aware of. MR. ANDERSON: I object to that.

Q. Were the reissue applications discussed with an examiner in the Patent Office prior to the filing of those applications? the witness not to answer the

A. Yes. tion in that form.

[Q. What examiner were they discussed with? applications

A. I don't know. I don't remember the examiner. the

Q. Did you have anything to do with the decision that?

A. the reissue applications be discussed with an examiner in the Patent Office before the filing of those applications? the Patent Office might be,

A. Yes. I have no specific recollection of that.

Q. What did you have to do with that decision?

A. As manager of the department and the attorney responsible for its operation, I think I could have decided whether or not the discussion would be held. ambiguous in that Mr. Jelliman works for

Q. Were you the one who made the decision?

A. I am responsible for what goes on in my department and I would have to answer yes.

Q. What was the purpose of discussing the applications

A. with the examiner prior to the filing of the

Q. applications? then discuss the matter of meeting

with the examiner re: MR. ANDERSON: I object to this

the question as attorney-client privilege and

A. work product in the form in which it is posed.

Q. I will instruct the witness not to answer the

question in that form.

Q. Are you aware of any purpose for the applications

Q. for the reissue patents being discussed with the

examiner prior to the filing of those applications?

A. I am not sure of any specific purpose. I would have to assume that the discussion was held to determine what the attitude of the Patent Office might be, but I have no specific recollection of that.

Q. Did you have any discussions with Mr. Williams or Mr. Seligman prior to the meeting with the examiner?

A. I don't know, Mr. Anderson. MR. ANDERSON: I object to the question as being in the alternative, also vague and ambiguous in that Mr. Seligman works for Mr. Etlinger and I presume he had some discussions with Mr. Seligman many times prior to that on many different subjects.

Q. Who attended the discussions with the examiner?

A. I believe it was Mr. Williams and Mr. Seligman.

Q. Did either of them discuss the matter of meeting with the examiner regarding the reissue applications with you prior to their attending the meeting?

A. I must have talked to Mr. Seligman about it.

Q. You actually had to authorize him to do it, did you not?

A. That is correct.

Q. Whose idea was it to conduct such a meeting with the Patent Office examiner regarding the reissue

applications? actions prior to their filing?

A. I have trouble with MR. ANDERSON: I object to the question as work product and attorney-client privilege and instruct the witness not to answer.

Q. Were any changes made in the reissue applications after the meeting with the examiner? filed?

A. I don't know, Mr. Welsh.

Q. Did you receive a report as to what occurred at the meeting?

A. Well, I would assume that Mr. Seligman gave me a verbal report when he came back.

Q. You don't recall? it was marked as Exhibit 22-20 and

A. I don't recall the details of it, no.

Q. Do you recall anything about what he said occurred at the meeting with the examiner?

A. No, I don't recall the details. I think this is a

Q. Did you ever consider the question of making with a record in the reissue application files the

Q. fact that a meeting was held with the examiner prior to the filing of the applications?

A. Not that I remember, Mr. Welsh.

Q. Was anyone else other than you involved in the decision to meet with the examiner regarding the

reissue applications prior to their filing?

A. I have trouble answering your question because I am not so sure what you mean by it.

Q. Did you consult with anyone regarding whether to have a meeting with the examiner regarding the reissue applications before they were filed?

A. I believe so. Section II marked "Joint Venture" on

Q. Who did you consult with? statement, "Sanders

A. Mr. Williams. I then under No. 3 there, "Hills and

Q. Anyone else? does." What devices did you have in mind

A. Not that I remember offhand.

Q. I hand you now what was marked as Exhibit 22-20 and ask if that is familiar to you? devices which would

A. Yes. useful or required in the CATV field.

Q. How is it familiar to you? apparatus?

A. To the best of my recollection, I think this is a

Q. draft for the possible agenda for discussions with TelePrompter, to interest someone in commercializing

Q. Was a final version of the possible agenda ever prepared? one of the purposes, Mr. Walsh, but the

A. Yes. a much broader range of discussions, as you can

Q. Is that Exhibit 22-18 and 19, the final version?

Q. This did contemplate, did it not, that Sanders

A. I believe so.

Q. Did you have anything to do with this draft, Exhibit 22-20?

A. Yes.

Q. What did you have to do with it?

A. I think I prepared it.

Q. Referring to Section II marked "Joint Venture" on Exhibit 22-20, appears the statement, "Sanders Supplies," and then under No. 3 there, "Bills and Supplies Devices." What devices did you have in mind there?

A. Well, to the best of my recollection, we were considering a whole series of devices which would be useful or required in the CATV field.

Q. Did that include TV gaming apparatus?

A. It may have.

Q. Wasn't that the whole purpose of meeting with TelePrompter, to interest someone in commercializing the TV gaming development of Sanders?

A. That was one of the purposes, Mr. Welsh, but we

Q. had a much broader range of discussions, as you can determine from these documents.

Q. This did contemplate, did it not, that Sanders.

would build and supply the TV gaming devices?

A. It certainly was part of the discussions and explorations.

MR. WELSH: May I have that answer, please?

Q. Was Exhibit 22-20 prepared prior to Exhibit 22-18? (Whereupon, the previous

A. I can't be certain, Mr. Welsh, it is undated, answer was read back

Q. Well, I believe you stated it was a draft of the by the reporter.)

Q. To whom were the devices referred to in this part numbered II, No. 3, of Exhibit 22-20?

Q. So it must have been MR. ANDERSON: Read the question, please?

A. It could very well have been, (Whereupon, the previous

Q. Was it not prior, if it were a draft? question was read back

MR. ANDERSON: I object to the question. You have asked the question of

this witness knows MR. ANDERSON: I object to the question, I don't understand it at all. It doesn't make any sense.

Q. That section of this letter on this document under joint venture states, "Sanders Supplies," and then under 3 under that, "Bills and Supplies Devices." To

BUILD

Transcript from 1976 May 13, 1976

whom were those devices to be supplied? I, then,

A. Well, if we could find something that was needed and TelePrompter and Sanders thought it was feasible to do, these devices would be supplied to the CATV market.

(whereupon, the previous question was read back by the reporter.)

Q. Was Exhibit 22-20 prepared prior to Exhibit 22-18?

A. I can't be certain, Mr. Welsh, it is undated.

Q. Well, I believe you stated it was a draft of the final version? Draft, Mr. Welsh. I have no

A. It was a draft of some thoughts that we or I

Q. had in submitting an agenda to TelePrompter, prior?

Q. So it must have been done prior to submitting a, that agenda?

A. It could very well have been. MR. ANDERSON: I will object

Q. Was it not prior, if it were a draft?

MR. ANDERSON: I object to the question. You have asked the question of

Q. this witness's knowledge and he has testified and

A. I think any further examination is redundant and

Q. improper, that?

A. I think it was done. THE WITNESS: Are you looking

Q. for an answer? Exhibit 22-22, 23 and 24 and ask

you if you are ready. MR. WELSH: Yes.

A. Well, it looks like MR. ANDERSON: Well, then,
reread the question, on the discussions with
Teleprompter.

Q. (Whereupon, the previous
Did you prepare these documents?
question was read back

MR. ANDERSON: If you recall,
by the reporter.)

THE WITNESS: I believe I did.

Q. And did you prepare THE WITNESS: And I answered
you before, it could very well have been prior

A. since it was a draft, Mr. Welsh, no I have no
specific recollection eight years later.

Q. Do you have any belief as to whether it was prior?
have anything to do MR. ANDERSON: You may answer,
if you can.

A. I believe so, Mr. Welsh MR. ANDERSON: I will object

Q. Only on the grounds of irrelevance, is that correct?

A. Well, they fit in the THE WITNESS: I can make that
assumption, some thoughts on the possible

Q. Do you have any belief? with Teleprompter?

A. Yes, are they your thoughts?

Q. What is that?

A. I think it was done before.

Q. I hand you now Exhibit 22-22, 23 and 24 and ask
you if you are familiar with those?

A. Well, it looks like a draft of some thoughts we had on the, or I had, on the discussions with TelePrompter., to the best of my recollection.

Q. Did you prepare those documents? or at any meetings you had with TeleProm MR. ANDERSON: If you recall.

A. I don't remember, Mr. THE WITNESS: I believe I did.

Q. And did you prepare them prior to the preparation of Exhibit 22-18? or mark this two-page letter as

A. I think so, Mr. Welsh. I have no specific recollection.

Q. Now, referring to Exhibit 22-25 to 22-33, did you have anything to do with the preparation of those documents? (Whereupon, Exhibit 56 was marked for identification.)

Q. what has been marked as Exhibit 56

A. I believe so, Mr. Welsh. half of Magnavox and

Q. Could you tell us what those documents are? or and

A. Well, they fit in the same category as the other

A. ones. Drafts, some thoughts on the possible

Q. agenda for discussions with TelePrompter or the

Q. And were they your thoughts?

A. Pardon me? or a letter from Mr. Briody addressed to

Q. And were they your thoughts?

A. Well, probably, working in cooperation with

Mr. Baer.

Q. Did you furnish any of these drafts or copies of them to TelePrompter?

A. I would say no, to the best of my recollection.

Q. Did you have these drafts with you at any meetings you had with TelePrompter?

A. I don't remember, Mr. Welsh.

Q. Was anything ever done? MR. WELSH: I would like to ask the reporter to mark this two-page letter as Exhibit 56.

(Whereupon, Exhibit 56 was
marked for identification.)

Q. I hand you what has been marked as Exhibit 56 which was produced on behalf of Magnavox and

Sanders in response to requests for documents and ask you if that is familiar to you?

A. Yes.

Q. Would you identify what the document is for the record?

A. Well, it is a letter from Mr. Briody addressed to me dated August 30, 1974.

Q. Does it constitute an agreement between Magnavox and Sanders?

agreement?
A. MR. ANDERSON: I object to the question as asking for opinion. The document speaks for itself.

Q. THE WITNESS: The document to in the agreement? says sublicense agreement between Sanders Associates and Magnavox Company.

Q. Was anything ever done by Sanders in furtherance of this agreement?

A. MR. ANDERSON: I object to the question as ambiguous. What do you mean in furtherance of the agreement? The document speaks for itself.

THE WITNESS: I don't understand placed it in some instance. the question, Mr. Welsh.

Q. Did Sanders do anything with respect to the agreement after it was entered into?

A. MR. ANDERSON: You mean other than file it? I don't understand the question.

Q. Did Sanders do anything in performance under the agreement?

A. I still don't understand the question, Mr. Welsh.

Q. Did Sanders make and use a working prototype of a coin-operated video game referred to in the

- A. agreement? I don't know that either, Mr. Welsh.
- A. Yes. I think that test such games, has Sanders done
- Q. Did Sanders pay Magnavox the royalty of \$50 referred to in the agreement? The question, Mr. Welsh,
- A. I am not sure how that was handled, whether it was an offset against royalty payments from Magnavox or not.
- Q. How did Sanders use the working prototype?
- A. I think it was used for test purposes. Production?
- Q. What type of tests?
- A. I have no direct knowledge of how it was used, this was handled by Mr. Baer, but I believe he placed it in some installation to see what the public response was to it.
- Q. Has Sanders ever made more than one model of such game? Management decision.
- A. Yes, I think they made a small quantity.
- Q. What type of a game was it? President of the
- A. I really don't know. I don't believe I have seen the test games, but they are a commercial type coin game. Hockey or something like that.
- Q. Were all of the small quantity of games made the same or were they different games?

A. I really don't know that either, Mr. Welsh.

Q. Other than test such games, has Sanders done, could anything else with respect to them?

A. I have a problem with the question, Mr. Welsh, I don't understand what you are referring to.

Q. Did Sanders ever go into production of such games?

A. No. question as to whether or not to go into

Q. Was a decision made not to go into production?

A. Yes. some discussions with Ralph, but I did not

Q. What was that decision?

A. Not to go into production. with Mr. Baer, did he state

Q. Did you have anything to do with the decision?

A. It was not my decision.

Q. Whose decision was it?

A. That was a management decision.

Q. Who in management made the decision?

A. I guess it must have been the president of the

A. corporation or another high executive.

Q. Were you informed of the reason why the decision was made?

MR. ANDERSON: Well, I am not
object, Mr. Welsh, I MR. ANDERSON: You may answer
that yes or no. also business confidential and I

THE WITNESS: No.

Q. Do you know why it was decided that Sanders would not produce a coin-operated video game?

MR. ANDERSON: Answer that yes or no.

THE WITNESS: No.

Q. Were you involved in any discussions regarding the question as to whether or not to go into production?

A. I had some discussions with Ralph, but I did not get in on the management discussions.

Q. And, in your discussions with Mr. Baer, did he state any reasons for Sanders not going into production of the coin-operated video game?

A. Not that I remember, Mr. Welsh.

Q. Do you know whether he made any recommendation to management with respect to going into production on the coin-operated game?

A. Yes.

Q. What was that recommendation?

MR. ANDERSON: Well, I object, Mr. Welsh, it is hearsay as to this witness. It is also business confidential and I

instruct the witness not to answer.

Q. Did he tell you what the recommendation was?

A. Whose recommendation?

Q. Mr. Baer's recommendation.

MR. ANDERSON: Did Mr. Baer tell Mr. Etlinger what Mr. Baer's recommendation to somebody else was?

MR. WELSH: Yes.

MR. ANDERSON: You can answer that yes or no.

THE WITNESS: Would you repeat the question, please?

(Whereupon, the previous question was read back by the reporter.)

THE WITNESS: Yes.

Q. What was the substance of your discussion with Mr. Baer regarding the coin-operated game?

MR. ANDERSON: You have asked that question and I have objected to it and I instructed the witness not to answer it in substantially the same form as you are now trying

to ask it and I object for the same reasons and instruct the witness not to answer for the same reasons.

(by the reporter.)

Q. Did Mr. Baer state to you the reasons for his recommendation to management with respect to going into production on the coin-operated video game?

MR. ANDERSON: You can answer that yes or no, general remarks?

THE WITNESS: Yes, all, nothing.

Q. What were those reasons?

MR. ANDERSON: I object and

instruct the witness not to answer for the same

reasons that I have objected and instructed the witness not to answer the other two times you have

tried to ask basically the same question.

Q. Did Mr. Baer tell you the results of the testing of the coin-operated videogame? the answers to the

questions which you MR. ANDERSON: I think you can answer that question yes or no, if I understood the question. Would you like the question read?

THE WITNESS: I can't remember the question.

MR. ANDERSON: Read the question.

order to discover it (Whereupon, the previous question was read back to try to work out a way to go by the reporter.)

THE WITNESS: I will answer the question this way, Mr. Welsh; he made some general remarks, I never did have a detailed discussion with him on any specific results.

Q. What were the general remarks?

A. That it was doing well or not doing well, nothing further than that.

Q. Was it doing well?

A. Sometimes yes and sometimes no.

Q. Did he state when it was doing well and when it wasn't?

A. Just general things.

MR. WELSH: Mr. Anderson, I wonder if the information or the answers to the questions which you have instructed the witness not to answer do not fall within our protective order?

MR. ANDERSON: Yes, they may, although I understand in the past you have had discussions over the applicability of the protective

order to discovery depositions. I was not privy to those conversations. I think if you want to try (hereupon, the following questions and colloquy to work out a way to give you that information - - - were taken pursuant to the protective order.

MR. WELSH: Off the record.

Subsequent to the completion of this portion,

it was agreed by the (Discussion off the record.)

be taken under the protective order and could be

MR. ANDERSON: I will state on

placed in the transcript as follows.)

the record that we have agreed that Mr. Welsh can

ask Mr. Etlinger certain of these business confidential

questions and that beginning with the next question,

until we instruct the reporter to the contrary,

the questions and answers and dialogue will be

taken under the protective order, transcribed,

separately and sealed until it is released in

accordance with the protective order that already

exists, treating that portion of the transcript

as if it were a document produced under the

protective order; is that agreeable with all three

lawyers? or for a year and a half, something like

that. MR. WELSH: Yes.

Could you tell us, MR. HERBERT: Yes. I told you

about the game and the MR. ANDERSON: Please note

that all three attorneys agree with that statement;

namely, Mr. Welsh, Mr. Flannery and Mr. Herbert.

As to answer the question by relating discussions,
(Whereupon, the following questions and colloquy
I can't be of much help to you. If you want to ask

were taken pursuant to the protective order.
To specific questions, I will be very happy to
Subsequent to the completion of this portion,
answer them.

it was agreed by the parties that it need not
be, what did the testing of the game consist of?

be taken under the protective order and could be
from what I have been told, it was placed in
placed in the transcript as follows.)

in some location and seeing how much - how many

Q. Mr. Etlinger, What was the substance of the
discussion with Mr. Baer regarding the coin-operated
video game which Sanders built and tested?

A. I have a problem with the question because it is
directed to a single discussion, one particular
discussion. There were more than one.

Q. How many were there?

A. I don't know how many there were, I don't remember,
but there was more than one.

Q. Over what period of time did they occur?

A. Over a year or a year and a half, something like
that.

Q. Could you tell us generally what Mr. Baer told you
about the game and the testing starting with your
first discussion?

A. I can't remember specific discussions and, if I am to answer the question by relating discussions, I can't be of much help to you. If you want to ask me specific questions, I will be very happy to answer them.

Q. Well, what did the testing of the game consist of?

A. From what I have been told, it was placing it in some location and seeing how much - how many times it was played.

Q. Was there only one game placed out on some location?

A. I think there were a few. A small quantity.

Q. Did you have some other arrangement with the Magnavox Company with respect to the additional games other than the one specific prototype referred to in Exhibit 56? place over many months, Mr. Welch.

A. Not that I remember. or the recommendation was made

Q. What did Mr. Baer state was his recommendation to management with respect to the coin-operated video games? or not getting into the video games?

A. I think Mr. Baer raised a question of Sanders' building and producing games.

Q. Did he just raise the question or did he make the recommendation that Sanders do build and produce games?

A. The recommendation, Mr. Welsh, was not made to me.

Q. Did he tell you what it was?

A. From the circumstances and discussions, he made a recommendation to get into the game business.

Q. Did he tell you why Sanders did not get into the game business?

A. He told me that the management had turned it down.

Q. Did he make a recommendation to get into the business after the testing?

MR. ANDERSON: I object to the entire line as hearsay and double hearsay in several cases. You can answer, if you know.

THE WITNESS: As I mentioned before, this took place over many months, Mr. Welsh. I don't recall whether the recommendation was made before or done concurrently.

Q. Did Mr. Baer tell you the reasons stated by management for not getting into the video games?

MR. ANDERSON: Again I object on the grounds of double hearsay.

Q. The coin-operated video game business.

A. I don't believe so, Mr. Welsh.

Q. Do you have any ideas as to why management decided not to get into the coin-operated video game business?

(by the reporter.)

MR. ANDERSON: I object on the ground of speculation and lack of a foundation. The only thing I can say, Mr. Welsh, is apparently they didn't think it was for us. Whatever reasons, they were not communicated to me as far as I remember. I really don't know what the management reasons were. It could be it wasn't a product that they wanted to market or a host of reasons, but they were not communicated to me.

(discussion off the record.)

MR. WELSH: Let's break for lunch.

(Whereupon, the luncheon

recess was taken.)

Q. (By Mr. Welsh) Was any of the coin-operated video games other than the prototype referred to in Exhibit 56 manufactured by Sanders under a license from Magnavox?

MR. ANDERSON: I will, your question, but I will try to read the question, please?

I believe that Mr. [redacted] (whereupon, the previous
question was read back sense
and if my memory serves by the reporter.) that they
were to be done on [redacted] MR. ANDERSON: Are we out from
under the protective order right now? additional
machines?

MR. WELSH: Yes, we are, as
far as I know.

MR. ANDERSON: I object, what
additional machines? MR. FLANNERY: Off the
record.

MR. WELSH: The ones that
they made in addition to the single prototype [redacted]
(Discussion off the record.)
mentioned in Exhibit 56.

MR. ANDERSON: Mr. Welsh,
in view of the fact that you are not leaving the
subject of this management decision, and in view
of what has been asked and what testimony has
been given, I think we can waive the confidentiality
of that portion that we had just before lunch and
let the reporter run the whole thing through?
unsealed. We've had a verbal agreement, as I

mentioned this word. MR. WELSH: Fine, that is
all right.

MR. WELSH: I'd like to
request, Mr. Anderson THE WITNESS: I am having
difficulty answering your question, but I will try.

I believe that Mr. Briody and I had furthering of discussions on additional units under the license and if my memory serves me correctly, that they were to be done on the same terms. the decision

Q. Were royalty payments made for those additional machines?

MR. ANDERSON: I object, what additional machines?

MR. WELSH: The ones that all they made in addition to the single prototype the mentioned in Exhibit 56.

THE WITNESS: I think I will answered that question this morning, but I will answer it again. I don't know how things were done, there may have been a set-off. Magnavox pays us money, it may have been put in as a credit.

Q. There were not any other agreements with respect to those other machines, however, were there?

A. No, I think we had a verbal agreement, as I mentioned this morning, we made just a few of them.

MR. WELSH: I'd like to request, Mr. Anderson, any documents which Magnavox or Sanders has relating to the construction

of these coin-operated video games, the testing of them and any communications between Magnavox and Sanders relating to them. Also we request any documents referring or relating to the decision not to go into production on the coin-operated video games?

MR. ANDERSON: All right; we will take it under advisement.

MR. WELSH: When can you tell us, Mr. Anderson, because of the shortness of the remaining discovery time?

MR. ANDERSON: Well, we will have to make a search and investigate it and I would really like to have the request in either a letter or have the transcript so I know that I have it precisely right. Do you want to give me a letter Friday and I will try to have some answer for you when we resume next week? I question the relevancy of what you are asking for. On what theory do you believe that any of this is relevant to any issue in the litigation?

MR. FLANNERY: Well, I think it is relevant for a couple of issues. One is the

scope of the claims and second is the misuse of the patents.

MR. ANDERSON: I guess I don't understand in that general sense how it is relevant to either one of those.

MR. FLANNERY: From the letter, the sublicense agreement, Mr. Anderson, it states that these coin-operated games must be covered by three of the patents that were licensed under the Sanders-Magnavox license agreement.

MR. ANDERSON: Anything else?

MR. FLANNERY: That is all I can think of right now.

Q. Mr. Etlinger, was a determination made as to the second condition stated in Exhibit 56 in the second paragraph, that three or more of the video game patents included in the January 27, 1972, license agreement between the Magnavox Company and Sanders Associates cover your new coin-operated video game?

THE WITNESS: Just give me the first four or five words at the beginning of that question.

(Whereupon, the previous question was read back of Article 4 which reads by the reporter.)

THE WITNESS: I think we ought assumed that they did, Mr. Welsh.

Q. What patents did you assume covered the coin-operated video game?

A. Are you asking me at the time of this letter? I don't remember at the time of this letter.

Q. When you said you assumed that at least three patents did not exist in any sublicense agreement wherein

A. At that time we found no problem, we found no problem with the fact that there were three patents covering it. I don't remember which ones at the time, whether we looked into it or didn't look into it, but we had no problem with this condition at all.

Q. When you say we, do you mean Sanders?

A. I had no problem with it. I think I did.

Q. Did Mr. Seligman have anything to do with this agreement?

A. No.

Q. Referring to Exhibit 44, the agreement of January 27,

A. 1972, between the Magnavox Company and Sanders Associates and more specifically paragraph E of Article 4 which reads --- You are referring now to Article 4? MR. ANDERSON: Maybe we ought to go off the record.

(Discussion off the record.)

THE WITNESS: Well, I may not

Q. "Sanders shall have the right to approve the terms and conditions of all sublicense agreements which approval shall not unreasonably be withheld provided that in any sublicense agreement wherein the cash payment under Article 5, Sections 1 and 2, and royalty rates are at least one-half of those set forth in Articles 5 and 6, Sanders shall not have such right of approval." Who suggested that that provision be included in the license agreement?

MR. ANDERSON: You may answer, if you know.

THE WITNESS: I think I did, Mr. Welsh, but it is hard to say, we had so many drafts go back and forth. granted sublicense?

Q. Was it not suggested on the part of somebody on the behalf of Sanders? rights to or to approve parties.

A. Well, I answered your question, I did.

Q. Why was that provision included?

MR. ANDERSON: You are referring now to Article Roman numeral IV, subsection E in its entirety?

MR. WELSH: Yes.

THE WITNESS: Well, I may not recall the specific reasons at the time. One of the things I think was that to the extent that we had the right to approve, which is very limited here, we wanted to make sure that the licenses were granted properly with respect to the law and that there would be proper treatment under the law.

Q. Do you remember any other reasons?

A. No.

Q. Was there any business reason?

A. Business reason?

Q. Yes.

A. None that I can remember.

Q. Was one of the reasons that you desired to approve the parties that might be granted sublicenses?

A. No, there is nothing in here about approving parties nor does it give any rights to us to approve parties.

Q. Referring again to the coin-operated video games, the subject of Exhibit 56, are any of those games still in existence?

A. I really don't know.

Q. Was there a business reason for including in the licensing agreement with Magnavox, Exhibit 44, the right for Magnavox to grant sublicenses?

A. Mr. Welsh, I have a little problem, I don't understand completely what you mean by a business reason.

Q. Well, was there any reason for granting Magnavox the right to grant sublicenses?

A. It became a matter of negotiation, also since they were in the industry, they were in the best position to seek licenses and grant them.

Q. Upon the granting of sublicenses, Magnavox no longer is an exclusive licensee, is it?

MR. ANDERSON: I object to the question. It is vague and ambiguous; I don't understand it, and, if anything, the document speaks for itself.

THE WITNESS: I don't understand the question either, if you are waiting for an answer.

Q. Well, did you consider whether it was more

advantageous to have Magnavox as an exclusive licensee or to have Magnavox able to grant sublicenses to others?

MR. ANDERSON: Well, I object to the question, I don't think those are alternatives. I don't understand that question. I think it is ambiguous. It is couched in language that is being misused in some way.

THE WITNESS: I don't understand the question either.

Q. Did you not consider whether it was advantageous - more advantageous to have Magnavox as an exclusive licensee rather than have Magnavox become a non-exclusive licensee upon the granting of sublicenses?

A. I don't understand that question either, Mr. Welsh.

MR. ANDERSON: I object to the question. Apparently you are trying to inject into the question some specific discussions of your own that may or may not have some viability. It seems that you are trying to state as a premise for the question that an exclusive licensee ceases to be an exclusive licensee if they have the right to grant sublicenses and I don't know that that is

true.

Q. Did you consider it was more advantageous to have Magnavox as an exclusive licensee or a nonexclusive licensee?

A. No.

Q. Referring to your previous answer in which you stated Magnavox was in the industry and in the best position to grant sublicenses, what industry did you mean?

A. Well, they were in the TV industry among others. Magnavox is a company that has a broad range of activities and products.

Q. Who proposed that the license be exclusive?

MR. ANDERSON: If you know.

THE WITNESS: I think it evolved over the negotiations and the drafts.

I think Magnavox proposed it at one time or another, that it be exclusive.

Q. Who proposed that Magnavox have a right to sublicense?

A. Well, I believe it was Magnavox.

Q. Did Magnavox give any reasons why they wanted the right to sublicense?

A. None that I remember.

THE WITNESS: "I would like to ask the reporter to mark as Exhibit 57 a copy of a letter furnished in response to requests for production of documents to Mr. Louis Etlinger from Mr. Thomas Briody dated February 20, 1975; and a letter of March 4, 1975, from Mr. Etlinger to Mr. Briody as Exhibit 58?"

(Whereupon, Exhibits 57

and 58 were marked for

identification.)

Q. I hand you now Exhibit 57 and ask you if you received the original of that letter? and 22-03

A. Yes. I ask you if you prepared and sent to

Q. And did you receive it shortly after the date that bears, February 20, 1975?

A. The answer to that is I don't know. I did receive the letter because I have initialed it.

Q. When do you believe that you received it? I have

A. I assume sometime after it was mailed.

Q. Did you reply to the letter? that letter to

A. As far as I know, yes. 22-03, 17 and B37

Q. I hand you now Exhibit 58 and ask if that is a copy

Q. Did you read that proposal which is Exhibit 32-D1, D2 and D3 at the time that you mailed it to Mr. Martin?

A. Will you read the question back?
(Whereupon, the previous question was read back by the reporter.)

THE WITNESS: I presume so.

Q. Do you find on page 2 of that proposal under paragraph 2.1, Category 3, the term "Space War"?

A. Yes.

Q. Do you recall seeing that term at the time that you sent this proposal to Mr. Martin?

A. If I recall now that I saw it then, the answer is no.

Q. Does that term mean anything to you now in the context of this proposal?

A. I don't understand the question, Mr. Welsh.

Q. Does seeing the document refresh your recollection at all as to seeing that term when you sent the proposal to Mr. Martin?

A. No.

Q. Last November at the deposition of Sanders taken through Mr. Seligman, there was produced a punched paper tape which was marked as Sanders-Exhibit 5 and which Mr. Seligman stated had been provided by Mr. Frisbie after Mr. Frisbie received a telephone call from you. Did you make such a telephone call to Mr. Frisbie?

A. I asked him for what. MR. ANDERSON: I Object, what telephone call, you said such telephone call?

What was that? MR. WELSH: The one I just referred to in my prefacing statement. whatever it was. THE WITNESS: I think I made the telephone call to Mr. Frisbie.

Q. When did you make that telephone call?

A. It must have been sometime before we produced this. A few days before or some period of time.

Q. How did you happen to call Mr. Frisbie?

A. I think it was in response to some - either request or interrogatory or subpoena - that we made a search for documentation that was requested.

Q. How did Mr. Frisbie's name come up?

A. Well, under our efforts to locate the requested items, we called the people most likely to know or

have knowledge or have custody of items." Mr. Frisbie is in our programming group and I guess that is where we were looking for programs or tapes and he seemed the logical man to call.

Q. What did you say to him when you called him?

A. I don't remember. I remember asking him if he knew

Q. Did you ask him for anything? we needed to respond

A. I asked him for whatever we were looking for at the time, Mr. Welsh. Did you say or did you paraphrase

Q. What was that?

A. Well, will you give me a copy of the subpoena or in whatever it was that prompted this, then I will be able to tell you.

Q. Did you read him paragraphs of the subpoena or did you ask him for materials related to games played on CRT's?

A. I don't recall.

MR. ANDERSON: I believe it was the 30-B6 request that we were searching for at about that time, if I am not mistaken. As you pointed out in one of your original questions this afternoon, this was about the time that the 30-B6 deposition was taken.

MR. WELSH: Well, this was produced on that day which was 11-20-75; that is, Exhibit 5 was produced on that day.

Q. Do you remember any of the conversation with Mr. Frisbie?

A. All I can say is I remember asking him if he knew of any items, you know, that we needed to respond to the formal document.

Q. Well, did you ask him that way or did you paraphrase what was in the document?

A. I don't remember, Mr. Welsh, the specific terms in which I asked him, but he did come up with that tape.

Q. Did he bring the tape to you?

A. I don't know if he brought it to me or sent it up. I have no recollection of it.

Q. Did you discuss with him where he obtained the tape?

A. Yes.

Q. Where did he say he obtained it?

A. He obtained it in the old storeroom.

Q. And where was that located?

A. Somewhere in the bottom of the building.

- Q. This building?
- A. Yes, I don't know where it is and I don't think I have ever been there.
- Q. Did he say where in the old storeroom he obtained the tape?
- A. I don't believe so.
- Q. Did he state whether it was located with any particular computer?
- A. I am not sure.
- Q. Did he say how long the tape had been there?
- A. I don't remember that. I have no recollection of that.
- Q. In your conversation with him, was any computer referred to?
- A. I think the tape was for a PDP-1.
- Q. Did he state that?
- A. I don't remember that.
- Q. Was the tape for a PDP-1 computer owned by Sanders?
- A. I don't know if these tapes are for any particular PDP-1 computer or not, Mr. Welsh. I don't know if whether they work on one or all.

MR. WELSH: Could you read

the question back, please?

I don't know that.

(Whereupon, the previous question was read back

by the reporter.)

Q. Did the subject of a PDP-1 owned by Sanders come up in your discussion with Mr. Frisbie?

A. It may have.

Q. Do you know whether Sanders owned a PDP-1 computer at that time?

A. Sanders did own a PDP-1 computer at one time which was located in Bedford. I am not sure whether they still have it or it may be in that storeroom, I don't know.

Q. Was the PDP-1 computer ever moved from Bedford Welch, to Nashua?

A. Well, if it is in the storeroom, it was moved.

Q. You didn't know whether it was in the storeroom?

I thought you meant at that time in November

A. I have some vague recollection of it being in a storeroom, so the answer to your question is if it was moved from Bedford to the storeroom, it was moved.

Q. When was it moved? or I talked to him or whether

A. I don't know that.

Q. Did you and Mr. Frisbie discuss when it was moved?

A. I don't believe so. I don't know from or when it came

Q. Did you and Mr. Frisbie discuss when Sanders received this tape, Exhibit 5?

A. I think I asked him and I don't think he knew when we received it. I don't know the tape came from or when?

Q. What was said between you in that regard? I think

A. I believe I asked him where it came from and when and he didn't know.

Q. Did you ask him if he knew who might know?

A. I may have.

Q. Did he say who might know?

A. I think he referred to a Mr. Ted Mairson. Mr. Welsh, you have all this on the record already from

Mr. Seligman's testimony.

Q. Well, he was testifying with respect to your telephone conversation and I am now seeking what occurred from your recollection. Did you have any conversation with Mr. Mairson regarding where the tape came from?

A. I am trying to remember if I even talked to him.

I don't remember whether I talked to him or whether someone else talked to him.

Q. Was some information obtained from Mr. Mairson regarding where the tape came from or when it came to Sanders?

A. I am not sure. I don't remember.

Q. Were you advised of any information received from Mr. Mairson about where the tape came from or when?

A. Somewhere along the line, I am not certain, I think it came with the machine.

Q. It came with the machine? I don't

A. I am not sure of that. I have a vague recollection of that being a possibility.

Q. What is the source of your information, Mr. Frisbie telling you or Mr. Mairson?

A. Maybe somebody through Mairson, I don't know.

Q. What did Mr. Mairson have to do with the tape or the computer, the PDP-1?

A. He was stationed in Bedford.

Q. Is he employed by Sanders today?

A. I believe so.

Q. Where is he employed at Sanders today?

A. I think he is in this building.

228 Q. When was the PDP-1 received at Sanders?

A. I don't know.

229 Q. Did anyone obtain any information from Mr. Friable or Mr. Mairson as to when the PDP-1 was obtained by Sanders?

A. I think someone checked into it; I don't remember it and I think - wasn't that asked in an interrogatory and answered?

230 Q. Were you given any information as to when the PDP-1 was received?

A. I think someone may have told me, but I don't remember the date right now.

231 Q. Do you remember the date approximately; was it in the 1960's?

A. No, I don't remember.

Q. Do you remember whether it was here prior to 1970?

A. I don't.

3 Q. Do you have any recollection as to when you were told the PDP-1 was obtained by Sanders?

A. No, I don't have any recollection of the date.

Q. Was Mr. Mairson at Bedford when the PDP-1 was received?

A. I really don't know.

- Q. Were you told anything in that regard?
- A. Not in that regard, no.
- Q. How long has Mr. Mairson been with Sanders?
- A. I don't know.
- Q. Do you have any information in that regard as to how long he has been here?
- A. I know he has been here a while, several years.
- Q. Ten years, as long as ten years?
- A. He may have been, yes. That is something we can get for you, Mr. Welsh, I don't remember. We can check that out, but I don't carry around in my head how long he has been here or how long anybody else has been here.

MR. WELSH: We would like Mr. Mairson's and Mr. Frisbie's full name. Also we would like to take their depositions, would you be willing to produce them without subpoenas?

MR. ANDERSON: Well, I think the question probably isn't as much subpoenas as to how or when it could possibly be done. We are scheduled for next week already.

MR. WELSH: Off the record.

(Discussion off the record.)

MR. WELSH: That completes my direct examination of Mr. Etlinger.

MR. ANDERSON: All right; shall we continue the same arrangement in effect where he will read it and sign it before any notary public?

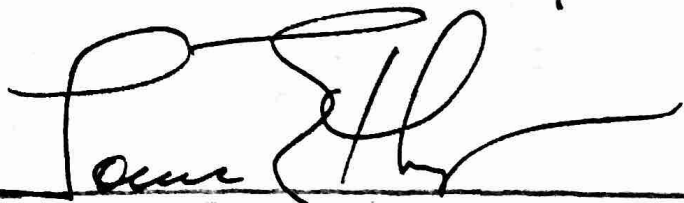
MR. WELSH: Yes.

MR. ANDERSON: Mr. Herbert, do you have any direct or cross-examination?

MR. HERBERT: No, I have not.

MR. ANDERSON: All right, Mr. Etlinger, you are excused.

THE WITNESS: Thank you.

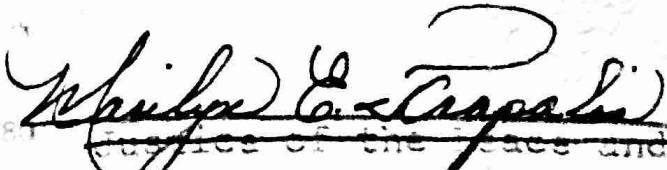

Dependent

THE STATE OF NEW HAMPSHIRE)
COUNTY OF Hillsborough SS.

Subscribed and sworn to before me this 13th
day of May 19 76.

Marilyn E. Trapala
Notary Public

My Commission Expires March 19, 1980


Notary Public

EXHIBITS

| <u>No.</u> | <u>Page</u> | <u>Description</u> |
|------------|-------------|--|
| 56 | 36 | August 30, 1974, letter from Briody to Etlinger. |
| 57 | 59 | February 20, 1975, letter from Briody to Etlinger. |
| 58 | 59 | March 4, 1975, letter from Etlinger to Briody. |